

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
FIRST APPEAL No 5041 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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STATE OF GUJARAT

Versus

JHALEJAR BAMANSHA CONTRACTOR

Appearance:

Mr.K.G.Sheth, learned A.G.P. for the appellant
MR YN OZA for Respondents - claimants.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/05/99

ORAL JUDGEMENT (Per: M.R.Callla,J)

1. This First Appeal in the matter of land acquisition is directed against the order dt.16.4.96 passed by the District Judge, Panchmahals, Godhra in Land Acquisition Reference case No.7/85.

2. The lands of Taluka town Santrampur, District Panchmahals were sought to be acquired for the Kadana Project. For this purpose the Notification under S.4 was issued on 15.2.79 and the Notification under S.6 was issued on 30.10.80 and 5.3.82. The Land Acquisition Officer passed the Award on 16.3.82 awarding compensation at the rate of Rs.35/- per sq.mt. with regard to the lands of S.Nos.832 and Rs.60/- per sq.mt. with regard to the lands of rest of the Survey Numbers under acquisition as against the demand of the claimants at the rate of

Rs.200/- per sq.mt. The claimants sought Reference under S.18 of the Land Acquisition Act and the Reference Court has partly allowed (?) the Reference by awarding compensation at the rate of Rs.225/- per sq.mt. We have put the question mark against the words "partly allowed" because we find that the demand of the claimants was for S.200/- per sq.mt. only and the Reference Court has granted compensation at the rate of Rs.225/- per sq.mt. while deciding the Reference Case No.7/85 on 16.4.96 and yet it says that the reference is partly allowed. The learned A.G.P. has assailed this order dt.16.4.96 passed by the Reference Court on more than one grounds and has submitted that by no stretch of imagination, the compensation in the present case could be awarded at the rate of Rs.225/- per sq.mt. We have gone through the order passed by the Reference Court and the proceedings, which were recorded before the Land Acquisition Officer as per the record, which has been made available to us. We have also gone through the order passed by the Reference Court and have heard learned counsel for both the sides.

3. The order passed by the Land Acquisition Officer shows that he has narrated the sales at Items Nos.1 to 11 in the order and these sales include the sale of agricultural lands, whereas the land in question is claimed to be a land under City Survey Number and, thereafter, while referring to the sales mentioned at Item Nos.1,2,3,4,5,6,10 and 11 and while making particular reference to the sales mentioned at Items Nos.3,4,5,6,10 and 11 he has fixed the market rate at the rate of Rs.60/- per sq.mt. as mentioned in detail at pages 8, 9 and 10 of the certified copy of the order dt.6.3.82. With regard to the land of City Survey No.832 admeasuring 18528.40 sq.mts. he has fixed the market rate at the rate of Rs.35/- per sq.mt. The conclusion arrived at by the Land Acquisition Officer in this regard does not appear to have been correctly arrived at and the learned counsel for the respondent has also pointed out certain inconsistencies, which the learned A.G.P. was not able to explain. As against this, it appears from the order of the Reference Court that the Reference Court has not followed the proper principles with regard to the appreciation of the admissible evidence and the documents, which should not have been taken to be proved in absence of evidence, have also been taken note of. It is the admitted case of the parties that no witness was examined for the purpose of proving the sale instances and it further appears from the record that certain documents were produced on behalf of the Department after the evidence of the claimants were over. It transpires

from the record and proceedings that the evidence of the claimants, which commenced on 10.4.95 was over on 15.5.95 and, thereafter, on behalf of the Department some documents were produced. These documents were exhibited as Exhs.42 to 44 as per the list Exh.41 dt.2.1.96 and documents Exhs.47 to 81 (including Exh.75 to 81) as per the list Exh.46 dt.18.1.96. In absence of any witness so as to prove these documents, the same could not have been taken into consideration but the Reference Court has made use of these documents and gave advantage to the claimants without considering the same with reference to the point of time of the sale and has made a bald observation that in the case of Exhs.75 to 81 the market price of the land situated at Santrampur was fixed at 2 to 5 times and he has thereafter suddenly concluded that it is necessary to fix the market price of the land in question at the rate of Rs.225/- per sq.mt. No regard has been kept to the oral statements, which were made by the witnesses on behalf of the claimants and even the comparative geographical situation has not been considered. Thus, the relevant facts with regard to the point of time, the comparable geographical situation of the concerned land as per the oral statements etc. had not been considered and without application of mind to the relevant facts and the considerations germane for the purpose of determining the market value of the land so as to fix the rate of compensation, the rate of compensation has been fixed at Rs.225/- per sq.mt. It is interesting, rather surprising, to note that the compensation has been granted at the rate of Rs.225/- per sq.mt. as against the demand of the claimants at the rate of Rs.200/- per sq.mt. even before the Land Acquisition Officer and also before the Reference Court and even while doing so the Reference Court has not given any reason as to why the compensation was granted at a rate higher than what was claimed by the claimants themselves.

4. We heard the matter at length on days more than one and have also perused the record with meticulous care so as to find out as to whether we can fix any fair rate of compensation on the basis of the material available on record. It is a dismal fact that there is nothing on record on the basis of which it can be assessed as to what should be the fair amount of compensation in this case. On the one hand, we find that the rate at which the compensation has been granted by the Land Acquisition Officer appears to be on the lower side and on the other hand, we also find that the rate of Rs.225/- per sq.mt., which has been fixed by the Reference Court, is also excessive and the sales, about which the reference has been made in the order passed by the Land Acquisition

Officer, do not afford proper guidance in absence of necessary factual data to arrive at the correct rate of fair compensation and so far as the order of the Reference Court is concerned, it has taken note of the material, which could not be said to be admissible in the evidence and further that the documents, which have been filed subsequently to the closing of the evidence by the claimants, have been made use of although they have not been properly proved and the entire decision is based on documents, which were otherwise not admissible in evidence. In such cases, normally the Court's endeavour while hearing the First Appeals against the orders of the Reference Court, should be to see that the matter reaches the logical end and in case the rate at which the compensation has been granted by the Reference Court has been found to be higher, the Court itself may take up the exercise of fixing the reasonable rate. But in the facts of the present case, we find that there is no material to determine the reasonable and fair rate of compensation. We, therefore, follow the view which has been taken by a Division Bench of our own High Court in the case of State v. Khant Kanji Rana, reported in 1998(2) GLR 1383, wherein the Division Bench has observed that the Court is conscious of the fact that ordinarily the positive approach of the court should be to consider whether a just and reasonable amount of compensation could be awarded from the facts and circumstances and evidence produced on record, but in cases where applying this test, the Court is not able to cut short the legal journey, painfully but dutifully the Court has to state that it is left with no alternative but to resort to order of remand in view of absence of necessary evidence and the application of wrong principles and terms adopted by the Reference Court. In the instant case it is transparently clear that the Reference Court has not applied correct norms and principles either with regard to the appreciation of the evidence or with regard to the admissibility of the documents in evidence or with regard to the procedure according to which the documents could be taken on record and without application of mind to the relevant factors and the considerations germane to the fixing of the market rate, the compensation has been granted at a rate higher than what was claimed by the claimants. Whereas there is no document on which we can arrive at a decision as to what would be just and fair rate of compensation to be awarded to the claimants in the facts of the present case, it is not possible for us to adjudicate and decide the fair rate of compensation.

5. For the forgoing reasons, the impugned order dt.16.4.96 passed passed in Land Acquisition Reference

Case No.7/85 by the District Judge, Panchmahals, Godhra is quashed and set aside and the matter is remanded back to the concerned Court for deciding the Reference afresh after affording reasonable opportunity to both the sides for producing the evidence and, thereafter, decide the Reference de novo in accordance with law after affording opportunity to both the sides. In the remanded proceedings, it will also be open for the Department to raise the objection with regard to the grant of solatium as the Land Acquisition Officer has passed the award prior to the date of introduction of the Bill amending the Land Acquisition Act on 30.4.82 and the Reference Court had decided the Reference after the date of amendment i.e. 24.9.84. Since the Reference case is as old of year 1985 and by this time we are heading towards the next century, it is expected that the concerned Reference Court will give priority to this Reference in hearing and that it should be the endeavour of the Reference Court to decide this Reference as early as possible preferably within a period of six months from the date the certified copy of this order is produced before the Reference Court by either of the parties.

6. In case any amount has been withdrawn by the claimants on the basis of any order passed by this Court on 19.1.99 or otherwise, the same shall be subject to adjustment at the final outcome of the Reference and the claimants shall also continue to furnish the Bank guarantee as was ordered by this Court on 19.1.99 till the final disposal of the Reference. The order dt.19.1.99 passed by the Division Bench below office submission in Misc. Civil Application No.465/97 (which had already been disposed of on 18.3.97) is hereby reproduced as under for ready reference of all concerned:-

"In Civil Application No.10518 of 1996, the Court (Coram: B.C.Patel & H.R.Shelat,JJ) had directed the State of Gujarat to deposit 30% of the decretal amount before this Court. Subsequently, while disposing of the said Civil Application, the Court ordered the claimant to deposit the decretal amount directed to be deposited in the Court. Thereafter, by order dated March 18, 1997, passed in Misc. Civil Application No.465 of 1997, the Court had permitted the claimants to withdraw 50% amount out of 30% amount deposited in the Court. The Joint Registrar had made submission for obtaining court's order regarding furnishing of bank guarantee on March 31, 1997 and, as

per the Office submission, the Joint Registrar had obtained appropriate orders from the Court on July 16, 1997. The Office submission makes it very clear that the bank guarantee has expired on June 10, 1998. Under the circumstances, the claimants are directed to furnish continuing bank guarantee regarding withdrawal of 50% amount out of 30% amount which was directed to be deposited in this Court.

January 19, 1999

Sd/
(J.M.Panchal,J)
Sd/-
(M.H.Kadri,J)"

7. This Appeal is accordingly allowed in the terms, as aforesaid. No order as to costs. Record and Proceedings may be returned back to the concerned Court forthwith.

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